

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12922 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No

PARIKH RAMANLAL GOVINDLAL

Versus

ONGC

Appearance:

MR RA PATEL for Petitioners
SERVED for Respondent No. 1
MR RAJNI H MEHTA for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 15/07/96

ORAL JUDGMENT

This Special Civil Application has been filed by late Shri Parikh Ramlal Govindlal challenging the order dated 31.3.1994 passed by the Jt. Dist.Judge, Mehsana under section 10 of the Petroleum and Minerals Pipelines (Acquisition etc.) Act, 1962. (hereinafter referred to

as 'the Act of 1962). During the pendency of this Special Civil Application, on the death of Parikh Ramlal Govindlal, one Deviben has been substituted as his heir.

2. The petitioner is the owner and occupant of land bearing survey No. 1953 and 1954 in Village Kadi, District Mehsana. Proceedings were initiated under the Act of 1962 for acquiring the right of user for the purpose of laying down pipelines from junction point to GGS/CTF South Kadi in Kadi oil field by the respondent Oil and Natural Gas Commission (hereinafter referred to as 'the ONGC'). After completing the necessary formalities on 23.5.1974, the original petitioner had executed necessary kabulatnama. Thereafter the pipelines were laid down in the land admeasuring 14 are and 25 sq.metres of survey No. 1954 and 20 are and 85 sq.metres in the land of survey No.1953. In the kabulatnama, some details of the standing trees and plants were given. The petitioner claimed compensation as against the trees for a sum of Rs.8300/-. He also claimed compensation for the land in the sum of Rs.25,000/-. The competent Officer, under the Act of 1962, considering the soil, situation and rising trend of the land value in last 10 years, determined the market value of the land at Rs.225/- per Are and awarded compensation 10% of the same at Rs.22.50 per Are for acquisition of right of user under section 10(4) of the Act of 1962. In view of this, the Competent Authority calculated the compensation at Rs.2,563/75.

3. The matter was carried to the Court of the Jt. District Judge, Mehsana under section 10 of the Act of 1962 at the instance of the original petitioner Parikh Ramlal Govindlal. The learned Jt. District Judge, in a detailed and well reasoned order, has stated that the claimant did not led any evidence with respect to the actual loss. He found that there is nothing in the statement of claimant as to how many trees have been uprooted. The Jt. District Judge also considered the statement of one Virendra Mehta, Superintending Engineer, wherein he has stated that no damage was caused to the trees during the laying down of the pipelines. Thus, considering the entire materials on record, the Learned Judge dismissed the Civil Misc. Application.

4. It is contended by Mr Patel, learned Advocate for the petitioner that the learned Judge has failed to appreciate the material on record. He has invited my attention to the kabulatnama at Annexure 'A' dated 23.6.1974 and contended that there was a specific claim for a sum of Rs. 8,300/- with respect to the trees and plants and a sum of Rs. 25,000/- with respect to

compensation for the land. It is also submitted that certain sale instances were given with respect to the market value of the land but the same have not been considered either by the competent authority or by the Jt. District Judge.

5. In order to appreciate the contention of the learned Advocate for the petitioner, it would be appropriate to have a brief survey of the provisions of the Act of 1962. The Act of 1962 was enacted with a view to provide for acquisition of right of user in land for laying down pipelines for the transport of petroleum and Minerals enacted thereafter. Section 3 of the Act provides that whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum or any Minerals from one locality to another locality pipelines may be laid by that Government and for that purpose it may become necessary to acquire the right of user in any land. In such eventuality, the Government may issue a declaration on its intention to acquire the right of user therein. Section 4 empowers a person authorised by the Central Government to enter on the land for the purpose of survey etc. During the course of survey, the servants and the workmen may undertake to dig or bore in to the sub-soil and undertake identical operations. Section 5 provides for hearing of objections. Section 6 provides for declaration of acquisition of right of user. This provision provides that on publication of the declaration under sub-section (1), the right of user in the land specified therein shall vest absolutely in the Central Government free from all encumbrances. Section 7 empowers the Central or any State Government or Corporation to lay pipelines, after the land is vested in accordance with the provisions of section 6. It is made clear under section 7 that such land shall be used only for laying pipelines and for maintaining, examining, repairing, altering or removing any such pipelines or for doing any other act necessary for any of the aforesaid purposes or for the utilisation of such pipelines. Sub-section (2) of section 7 provides that if any dispute arises with regard to any matter referred to in paragraph (b) or paragraph (c) of the proviso to clause (i) to clause (i) of subsection (1), the dispute shall be referred to the competent authority whose decision thereon shall be final. Section 7 empowers any person authorised on behalf of the Central Government, State Government or Corporation for entering into the land for inspection etc. Section 9 provides restrictions regarding the use of land. An occupier of the land with respect to which the declaration has been made under

sub-section (1) of section 6, shall be entitled to use the land for the purpose for which the land was put to use immediately before the date of notification under sub-section (1) of section 3. This right of use by an occupier has been restricted to the extent of not raising a construction thereon or excavate any tank, well, reservoir or dam or plant any tree. Section 10 provides for compensation. The relevant portion reads as under:

"Compensation - (1) Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the Corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance."

Clause (1) of section 10 provides for damage, loss or injury on account of any operation under sections 4, 7 or 8. Sub-clause (2) provides that the compensation shall be determined by the competent authority under sub-section (1) and if it is not acceptable to either of the parties, they may move application to the District Judge within whose jurisdiction the land or any part of the land is situated. Sub-clause (3) provides that the competent authority or the District Judge while determining the compensation under sub-section (1), shall have due regard to the damage or loss sustained by any person interested in the land by reason of removal of trees or temporary severance of the land or injury to any other property. Sub-clause (4) provides for compensation for the right of user of the land. It provides that the person whose right of enjoyment in the land has been affected, the compensation may be calculated at ten percent of the market value of that land on the date of Notification under sub-section (1) of section 3. Section 11 provides for deposit and payment of compensation. Section 12 provides that the competent authority to have certain powers of civil courts while trying a suit with respect to certain matters specified therein. Section 13 gives protection to the employees of the Government with respect to the action taken in good faith. Section 14 bars the jurisdiction of the Civil Court. Section 15 provides for the prosecution and penalty. Section 16 provides that the offence under the Act shall be cognizable. Section 17 empowers the Central Government

to make rules. Section 18 provides that the provisions of the Act shall be in addition to and not in derogation of any other law for the time being in force relating to acquisition of land. The Central Government in exercise of powers of section 17 has also framed the rules which may be called "The Petroleum Pipelines (Acquisition of Right of User in Land) Rules, 1962 (for short 'the Act of 1963).

6. The survey of the provisions of the Act of 1962 and the Rules of 1963 indicates that under the Act of 1962, it is only the right of use is acquired. The land remains with the owner as such, it is not be confused with the Land Acquisition Proceedings. Section 6 clearly speaks that it is only the right of user for laying down pipes which shall be acquired. Further sub-section (2) speaks that on publication of the declaration under sub-section (1), the right of user in the land specified therein shall be vested in the Central Government. The right of user is also to a limited extent as provided under section 7 that such land shall be used only for the pipelines and for maintaining, examining, repairing, altering or removing any such pipelines or for doing any other act for any of the aforesaid purposes or for utilisation of such pipelines. Section 9 makes it clear that the owner or the occupier of the land shall be entitled to use the land for the purpose for which such land was to put in use immediately before the date of Notification under sub-section (1) of section 3 subject to certain conditions. Thus, a land the use of which is acquired under the Act of 1962 is not parted with and it can be used as was being used prior to acquisition by the owner or occupier of the land subject to certain conditions. In view of this under sub-clause (4) of section 10, an owner or occupier is only entitled to compensation at ten percent of the market value of the land on the date of notification under sub-section (1) of section 3. The second part of the compensation is for actual damage, loss or injury. A reading of the provisions of the Act of 1962 shows that there are three provisions which empowers the servants and the workmen of the Central Government or State Government or Corporation to enter into a land acquired for the purpose of the Act. At the first instance, Section 4 empowers the servants and the workmen for the purpose of survey etc. Thus, during the survey operation, on account of dig or bore or any such activity, if any injury or damage or loss is caused, one may maintain the claim and the claimant will have to show as to what actual damage has been caused. After the survey the second stage is the actual laying down of the pipelines. Section 7 of the Act empowers the

servants and the workmen of the Government to enter on the land and carry on the operation. If during the operation any loss or damage is caused, the owner or the occupier of the land is entitled to compensation for which he will be required to establish the actual damage or the loss occurred. The third stage is of inspection i.e. after the pipeline is laid down, a portion is required for maintaining, examining, repairing, altering or removing any pipelines. Thus, on account of this if any damage or loss is caused, the owner or the occupier of the land is entitled to compensation for the damages caused. Thus, a comprehensive study of the provisions shows that there is a continuous process of a claim on account of damage at a different stages. Therefore, in the matter of calculation of damages or loss, the claimant has to lay a basis as to how and to what extent the actual damage has been caused. e.g. he will have to show as to how many trees or plants were there and in fact they were uprooted or not. If they were not uprooted, the question of loss or damage does not arise, but if they were uprooted or otherwise damaged, further evidence will be required to be shown as to what was the yield from those trees or plants. In absence of such factual foundation, it would be difficult to calculate the damage or loss or injury.

7. In the present case, Ramlal Govindlal is his deposition Exh.4, has stated that there were 18 trees on his land, out of which 8 trees were of limbu and two trees were of Guva or pear and 3 trees were of pomagranate and one tree was of saragva and 4 to 5 trees were of gromia. He has assessed the compensation as Rs.8300/-. He admitted that he cannot say definitely as to how many fruit bearing trees or plants were standing on the place where the pipelines were laid down by the ONGC. He has not said a word as to at the time of laying of pipelines how many trees or plants were actually uprooted. On the other hand, Mr Virendra Mehta, Superintending Engineer, ONGC, in his deposition vide Exh.61, has stated that the work of laying of pipelines was commenced in June 1974 and completed in September 1974, and at that time, no damage was caused to the trees or fruit bearing plants. Even the Kabulatnama at Annexure 'A' dated 23.6.1974 simply speaks of certain trees and plants standing. Thus, there is no evidence worth-the-name as to how many plants or trees were uprooted and on account of which what damage was caused. The learned Advocate has placed much stress on a panchnama dated 8.6.1974 at Exh.57, which is described as panchnama and consent for carrying out the work of pipelines by the ONGC. As per the said panchnama the

original petitioner - Ramlal Govindlal gave his consent for laying down the pipelines in the field and he also withdrew his claim for Rs.25,000/- plus Rs.8300/- i.e. total Rs.33,300/- in the national interest. Certain details of the trees have also been given therein. It is further stated that he will not claim anything extra than what is provided under the Act and the rules of the ONGC. The learned Advocate argued that Mr Parikh Ramlal Govindlal was an uneducated person and the officers of the ONGC has obtained his signatures on the blank paper. In my view the learned Jt. District Judge was not correct in giving importance to this document. Whether the statement is right or wrong, whether such consent was given by the original petitioner or not, will have no bearing on the merit of the case for the reason that there is no evidence with respect to the actual uprooting of the trees or plants and further, evidence with respect to yield from those trees or plants. Thus, even if this document is taken out of consideration, it will have no effect on the merit of the case. Thus, the petitioner has failed to establish case for compensation on account of damage, loss or injury as required under section 10 of the Act of 1962. In view of this the finding of fact arrived at by the competent authority as well as the Jt. District Judge in this regard calls for no interference by this Court.

8. Taking the second part of the compensation, it is contended by the learned Advocate for the petitioner that the learned Judge has not taken into consideration the evidence of sale instance produced by the petitioner. An award of the Special Land Acquisition Officer, Ahmedabad was produced wherein the rent compensation of the land of survey No.1953 is fixed at Rs.100/- per Are per year. The competent authority rejected the said evidence for the reason that the said sale instance was of the period 19.5.1975 to 2.6.1977. In my view, the competent authority rightly rejected the said evidence as that the said sale instance is of the year subsequent to the year of 1974. Even otherwise it is of no use as it talks of rent compensation. Under sub-clause (4) of section 10 of the Act of 1962, the competent authority or the Jt. District Judge is required to assess the market value of the land as it existed at the time of Notification under section 3(1). The competent officer determined the market value of the land under acquisition as Rs.225/-per Area and as such awarded compensation at the rate of Rs.22.50, out of which the original petitioner was paid an amount of Rs. 789.70 of his share. This calculation is perfectly in terms of sub-section (4) of section 10 of the Act of 1962. I find no illegality in the assessment

of compensation for the use of the land.

9. No other point has been urged.

10. In view of the aforesaid, there is no merit in this Special Civil Application and the same is accordingly rejected. Rule discharged. No order as to costs.

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